IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.41 OF 1979

The Special Land Acquisition Officer,
Highways, Old Customs House,
Bombay-23.

and

M/s.Bright Brothers Limited,
156, Tardeo Road, Mumbai-34. Claimant

and

The Executive Engineer
Road Development Division No.IV,
Andheri (W), Mumbai-58.

The Municipal Corporation of Greater Mumbai, Mumbai. Acquiring Body

Shri Dhopatkar appearing for SLAO and Acquiring Body.

Shri Chandran with Shri N.S.Patel for claimants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th July 2006

ORAL JUDGEMENT (IN COURT) :-

1. This is a reference under section 18 of the Land Acquisition Act, 1894 (for brevity's sake hereinafter referred to as "L.A.Act"). The land under acquisition is 112 (part) (Survey No.62

Part) admeasuring 4,402.70 sq.mtrs. situate in Village Hariyali, Taluka Kurla, Mumbai Suburban District. The Notification under sub sections 2 and 4 of Section 126 of the Maharashtra Regional Town Planning Act, 1966 read with Section 6 of the L.A.Act was issued on 18th March 1975 and published in Maharashtra Government Gazette dated 26th June 1975. Therefore, the relevant date for the purposes of computing of market value, would be 26th June 1975. The acquisition of land was for Jogeshwari-Vikroli Link Road. Under this notification several lands were notified and details of the same are set out in the Award which has been declared on 31st March 1979.

2. As far as land of the claimants in this Land Acquisition Reference (for short "LAR") is concerned, there is no dispute about ownership. Pursuant to notices issued by the Collector, the claimants appeared along with their Valuer M/s.Kenkre & Associates. It is common ground that a claim was lodged for a land admeasuring 4,749.70 sq.mtrs. but it is found out that a portion of the same i.e. admeasuring about 347.57 sq.mtrs. was acquired for Central Railways, and, therefore that was not made subject matter of present reference. Similarly,

the award mentions an area of 4,940.20 sq.mtrs. but later on it was noted that an area of 347.50 sq.mtrs. out of this holding belonged to M/s.Harbertson Limited. The claimants also accepted this position and thereupon the area has been corrected to the present holding namely 4,402.70 sq.mtrs.. In the award it is noted that along with CTS No.122(Part), land CTS No.110(Part), 111(Part) and 112(Part) (land under reference) are situate on the Eastern and Western side of Central Railway Line. In other words, the land under reference is on the Western side, whereas, land bearing CTS No.122(Part) is on the Eastern side. The award notes that the land under reference is situate at a distance of about four furlong from Kanjurmarg Railway Station and about nine furlong from Vikroli Railway Station. The land under reference falls under the Heavy Industrial Zone. The land is having an access from Bombay-Agra Road. On both sides, industries have already come up and the area is developed. The Development Plan shows that these lands fall under heavy industrial zone. As far as claimants are concerned, before the Land Acquisition Officer, they claimed compensation @ Rs.120/- per sq.mtr. for 4,749.70 sq.mtrs. of land. They claimed compensation for compound wall and extra

monthly expenditure incurred because of the acquisition. They claimed compensation for construction of two walls on either side of the proposed link road. The claimants' Valuers M/s.Kenkre & Associates appeared before the Special Land Acquisition Officer (for short "SLAO"). They filed their Valuation Report dated 10th February 1979 which cited four sale instances from Hariyali Village. The award mentioned about 11 sale instances. As far as Acquiring Body is concerned, it relied upon remarks of the Executive Engineer, Road Development Department No.IV, Andheri and vide letter dated 26th April 1979 they were forwarded to the SLAO..

3. It is not necessary to make a detailed reference to the Valuation Report of M/s.Kenkre & Associates or to four sale instances mentioned therein as Shri Chandran appearing for the Claimants submitted that the claimants are relying upon only one sale instance and they are restricting their claim to Rs.70/- per sq.mtr. for the land under acquisition.

4. By consent of Shri Chandran and Shri Dhopatkar, the sale instance no.1 pertaining to

land Survey Nos.115(part), 99(part) and 96.7(part) which is already relied upon by the claimants in LAR No.32 of 1981, is treated as a piece of evidence and a copy of the sale deed of the same is marked as EXHIBIT-C. Both sides have relied upon this instance and, therefore, there is no difficulty in marking the same as piece of evidence. The sale instance which is relied upon by the claimants before me also forms part of the sale instances referred to and relied upon by the SLAO.. The sale instance is of land bearing Survey No.115(Part), 99(Part), 96.7(Part),. The sale is of an area of 2,558.89 sq.mtrs. and the rate is Rs.57.92 per sq.mtr.. The SLAO comments that the sale is bona fide. It is referring to this sale instance that the SLAO observes thus :-

> "Taking into consideration above discussion about instances of sales and situation of the land under acquisition, I value the lands of CTS No.110pt, 111pt and 112pt at the rate of Rs.50/- Rs.40/- Rs.40/- respectively.

He, therefore, awards a rate of Rs.40/- per sq.mtr. to the claimants and on that basis makes an award for Rs.2,02,524.20 Ps. for land and Rs.3,237.65 for the structures.

5. The claimants being dissatisfied with this award proceeded to accept this sum under protest and applied for this reference under section 18 of the L.A.Act. The reference has been forwarded to this Court some time in June 1979.

6. In the mean while, for the land bearing CTS No.122(Part), a reference under section 18 was forwarded which was ordered as LAR No.32 of 1981. A learned Single Judge of this Court by judgement and order dated 21st March 2006/3rd March 2005 decided the said reference and in accordance with the sale instance no.1 which was the only sale instance proved before the learned Single Judge, he awarded compensation @ Rs.47.92 Ps. per sq.mtr plus 5% increase every year from 1971 to 1975 and made deductions on account of location, distance and under-development. Thus, he awarded compensation of Rs.35.91 Ps. per sq.mtr. for the land covered by LAR No.32 of 1981. As far as that land is concerned, the SLAO had awarded compensation @ Rs.20/- per sq.mtr..

7. The claimants, therefore, are relying upon this judgement and the sale instance referred to therein as a piece of evidence to support their claim for enhanced compensation. Additionally,

on behalf of the claimants one Natubhai Kothari (constituted attorney) stepped into witness box. He filed his affidavit in lieu of examination-in-chief on 26th August 2005.

8. After setting out the details pertaining to the acquisition and the award, in para 3 of this affidavit, the claimants' witness states thus:-

> "3. The Claimants were the pioneers in plastic consumer items and had earned a lot of goodwill and were established. The Claimants owned the property being land admeasuring about 26761 square metres bearing Survey No.62 part corresponding to C.T.S.No.112 part of Village Hariyali. The constructed factory buildings and structures admeasuring about 70,000 square feet in a portion of the said land. The rest of the land including the acquired portion admeasuring 4402.70 square metres was vacant. The Claimants had planned to expand their capacities and build factories on the remaining portion of the said land in a phased manner. The said land is situated to the west of the Central Railway Main Line and has an access to the Bombay-Agra Road (now Lal Bahadur Shastri Marg). The Bombay Agra Road was then the Highway for going to Nasik, Gujarat and Central India. The Claimants land was about 200 metres from Kanjur Marg Railway Station and about 1 k.m. from Vikroli Railway Station. The land was highly developed at the time of acquisition. It was in Heavy Industrial Zone and lot of industries had come up. The Claimants land including the acquired portion was abutting the Railway Line. The Claimants land including the acquired portion was filled and leveled all throughout. It was at a height of 5'

> (five feet) above the railway land. The Claimants land was protected by a compound wall along its boundaries. Except for the factory buildings and structures, the said land was vacant. As mentioned above, the acquired portion was completely vacant. It was rectangular in shape. There were no encumbrances on the land including the acquired portion and it was in the actual physical possession of the Claimants."

9. Although, the record shows that the claimants had filed an additional affidavit and relied upon another sale instance of land admeasuring 3,130 sq.mtrs. bearing survey nos.96-A, Hissa No.2, CTS No.38 and 38(I) and Survey No.116 of Village Hariyali which was sold by registered Conveyance Deed dated 9th June 1972, Shri Chandran appearing for claimants states that despite this conveyance deed being exhibited and marked in evidence, he is not relying upon this sale instance. Therefore, it is not necessary to refer to the further affidavit insofar as this instance is concerned.

10. The claimants' witness has been cross-examined, before the Commissioner appointed by this Court, on behalf of the SLAO and Acquiring Body. Amongst other questions posed to him during the cross examination, a suggestion was put that the land which is subject matter of

LAR No.32 of 1981 is not similar to the land under reference. The witness replies that the land under reference is much superior than the land which is subject matter of LAR No.32 of 1981. He was specifically asked as to what is the distance of the land under reference from the Railway Station. The answer is that it is approximately 1,000 mtrs. from Kanjurmarg Railway Station. About location of the land a question was posed and he answered that the land under reference is situate on the Western side of the Kanjurmarg Railway Station. The internal roads are belonging to the claimants, is the reply to another question. Insofar as levelling and encroachments on the land under reference, the claimant's witness in his cross examination replies that the land was levelled and there are no encroachments.

11. The claimants' witness has specifically stated that except the factory building there is no structure on the land and the land adjacent to the structure of the factory as also other portion, is totally vacant. It is true that the answer to one of the question during the cross examination is that the land is divided into two parts because of the construction of road.

However, the cross examination stresses on the materials with regard to the rate claimed before the SLAO of Rs.120/- per sq.mtr.. It is not necessary to refer to this part of cross examination because of the statement of Shri Chandran, that the claimants are restricting their claim at Rs.70/- per sq.mtr.. So also, because of the fact that the claimants are not relying upon the sale deed dated 9th June 1972 that part of the cross examination, is not material for our purpose.

12. This is the only witness who has been examined and I have read his deposition and cross examination with necessary details.

13. Shri Chandran appearing for the claimants contended that the acquisition is for Jogeshwari-Vikroli Link Road. The basis facts are admitted. He submits that the land is superior to the land covered by LAr No.32 of 1981. He submits that the distinguishing features are that the claimants' land is situate at West side of the Kanjurmarg Railway Station. The entire area is developed. The portion of land under acquisition is wholly vacant. The land is leveled. It is clear from a perusal of

the judgement of this Court in LAR No.32 of 1981 that the sale instance proved therein is fully applicable to the claimants' case as well. The sale instance insofar as proximity of time, size, location and price, is comparable. Not only that, the claimants land is superior to the sale instance referred to by this Court in LAR No.32 of 1991. Shri Chandran invited my attention to the deposition of the claimants' witness and his cross examination. He submits that there is no cross examination insofar as the instance relied upon by the SLAO which awards Rs.57.92 Ps.per sq.mtr.. If the case proceeds on the basis that this is an instance of a comparable land, then considering the percentage of increase from the date of that instance till the date which is relevant for our purpose, the compensation should be what is awarded by this Court in LAR No.32 of 1981. However, he was at pains to point out that from the sum which has been taken as the market value of the land covered by LAR No.32 of 1981, certain deductions have been made. Those deductions need not be made in respect of the land under reference. Those deductions were made because the land under LAR No.32 of 1981 was situate on the East side. It was a barren and grassy land covered by hutments. The SLAO

awarded Rs.20/- per sq.mtr. in respect of that land. However, the sale instance with regard to land bearing CTS No.115(Part), 99(part) and 96.7(Part) vide sale deed dated 30th January 1971 being proof in that reference, the Court proceeded on the basis that Rs.57.92 Ps. to be the compensation for the land as well. Once, the compensation in LAR No.32 of 1981 has been enhanced from Rs.20/- to Rs.57.92 Ps. per sq.mtr. minus deductions, then in case of a superior land that of the claimants herein, the compensation be enhanced to Rs.70/- per sq.mtr.. Relying upon the same sale instance and giving the same percentage, the figure would be Rs.70/- per sq.mtr.. Therefore, a judgement of this Court in LAR No.32 of 1981 is the best piece of evidence along with the evidence referred to therein. That being admittedly marked in evidence in this reference, this Court should proceed to enhance the compensation as prayed and answer the reference accordingly.

14. On the other hand, Shri Dhopatkar appearing for the SLAO and the Acquiring Body has contended that the land covered by LAR No.32 of 1981 and the present reference, are not identical. He submits that an appeal has been preferred against

the judgement of learned Single Judge and, therefore, the judgement is not final. The submissions of Shri Chandran proceed upon the footing that the land under present reference is superior to that of the land covered by LAR No.32 of 1981. However, no material is produced in support of this contention and plea at all. He submits that the burden is entirely on the claimants and they have failed to discharge the same. He submits that neither is there any evidence to substantiate the rate of Rs.70/- per sq.mtr. nor is any valuation made of the land under present reference. The claimants could have very well taken assistance of a valuer to substantiate their case for enhanced compensation. They have not availed of this opportunity at all.

15. The submissions of Shri Dhopatkar proceed on the basis that a judgement of a Court in land acquisition proceedings determining market value of the land within the vicinity of the acquired land, could be admitted in the evidence either as an instance or one from which the market value of the acquired land could be deduced. But it must be proved by the person relying upon such judgement, by adducing evidence aliunde, that due

regard being given to all attendant facts and circumstances, it would furnish the basis for determining the market value of the acquired land. According to him, this principle is well settled by several decisions of the Supreme Court and of this Court. Therefore, by relying upon the decision of this Court in LAR No.32 of 1981 the burden is not discharged. The claimants were obliged to lead independent evidence to show that the lands which are covered by LAR No.32 of 1991 and one instance referred to therein, are identical, though not superior in terms of size, location, civic amenities, their potential and other relevant factors. He submits that the claim for enhanced compensation should be rejected.

16. He also brings to my notice a part of the deposition of the claimants' witness and his cross examination at page 43 of the paper book. He submits that there is no evidence with regard to the deductions that have been made by this Court in its judgement dated 21.3.2005/3.5.2005 in LAR No.32 of 1981. If those deductions are considered, then the amount awarded per sq.mtr. as compensation (Rs.40/-) must be maintained and the claim for enhanced compensation be rejected.

17. With the assistance of Shri Chandran and Shri Dhopatkar I have perused the reference application, the award, the evidence adduced, the documents relied upon and judgement of this Court in LAR No.32 of 1981.

18. The only question before me, therefore, is whether the claimants are entitled to enhanced compensation, and if yes, at what rate?

19. The claimants have more or less relied upon the admitted position with regard to the situation and the description of the land under acquisition. I have perused clause-3 of the award (internal page no.7) so also the deposition of the sole witness of claimants. It is common ground that the area of CTS No.62(part) corresponding to CTS No.112(Part) (land under reference) is 26,761 sq.mtrs. The constructed factory building and structure are admeasuring about 70,000 sq.fts. in a portion of the land. The land which is subject matter of the acquisition admeasuring 4,402.70 sq.mtr. is vacant. The claimants were planning to expand their activities and build factory on this portion in a phased manner. The land is situate

on West side of the Central Railway Line and has an access to Bombay-Agra Highway. The Bombay-Agra Road was then a highway for going to Nashik, Gujarat and Central India. The land is situate at about 1 k.m. from Kanjurmarg Railway Station and nearabout the same distance from Vikroli Railway Station. The land falls in a Heavy Industrial zone and Industries have come up in the vicinity as well. The claimants land abuts the Railway Line. The land including the acquired portion was filled and leveled all through. It was protected by compound wall along with boundaries. The acquired portion was completely vacant and rectangular in shape. There was no encumbrances on the land including the acquired portion and it was in the physical possession of the claimants.

20. The claimants' witness has also referred to another admitted position namely that LAR No.32 of 1981 was filed for enhanced compensation in respect of land bearing Survey No.52(Part) corresponding to CTS No.122(Part) belonging to Surji Vallabhdas family. It is further admitted that this land was also subject matter of acquisition for identical public purpose and under same notification. It was also subject

matter of the same award. However, it was located on the East side of the Railway Stations referred above.

21. When this Court was seized of the LAR No.32 of 1981, claimants therein (Surji Vallabhdas) adduced evidence of two witnesses and relied upon one sale instance. This Court analysed the evidence and held that Exhibit C-7 (instance no.1) is a registered Deed of Conveyance dated 30th January 1971 executed by Indumati Shah and Roshanlal Bhasin and others. Area is around 3,180 sq.yards and price stipulated is approximately Rs.1.54 lakh equivalent to Rs.6.10 Ps. per sq.mtr.. That is also an open land. This Court in para 8 of the judgement/award dealt with this sale instance and referred to other sale instances in the award and held thus:-

> "8. Though before the SLAO 15 instances were produced for the purpose of determination of the market value of the land before me only one instance is proved i.e. sale instance no.1. It is now well settled that under the provisions of section 18 for land acquisition Act what is required by me is to analyse only those sale instance which are proved before me and not the instances which are referred to and or relied upon of the Land Acquisition Officer in his award. thus the claimant has produced before me only one instance

> i.e. sale instance no.1 which is reflected in Exhibit C-7 which is the deed of conveyance dated 30.1.1971. Thus no other instances were proved before me by either of the parties. In so far as the SLAO and or the acquiring body is concerned they have not produced any oral evidence nor any documentary evidence and therefore they have not proved anything before me. Thus I am required to now consider instance no.1 as a proved instance. The market rate fixed in respect of sale instance no.1 is Rs.57.92/-. Both the learned counsels have admitted that the said land being instance no.1 is situated on the western side of what is known as LBS marg and or Bombay Agra Road which is also not disputed before me by both the parties. In the evidence also it is established that on the eastern side of Kanjurmarg Railway station and or LBS Marg the Bombay-Agra Road is not very well developed whereas on the western side of the said road the land is very well developed. The land under acquisition is on the eastern side of the LBS marg and that also at some distance of LBS marg. Thus the land under acquisition is though comparable to the instance no.1 since both the lands are located in the same locality still certain deductions are required to be given in respect of the land under acquisition. According to me the following deductions are required to be given out of the sale price of instance no.1 of 57.92.
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> . First deductions due to the distance from LBS marg (Bombay Agra road) - 10% deduction."

22. As observed in para 8 this Court proceeded to make deductions with regard to the land covered by LAR No.32 of 1981. One of the deduction was due to distance from LBS Marg (Bombay-Agra Road). In other words, land covered

by LAR No.32 of 1981 had no direct access to Bombay-Agra Road, whereas, before me the land has direct access to Mumbai-Agra Road. The land in LAR No.32 of 1981 was situate on the East side of Central Railway Line whereas the present land is situate on the Western side of the Central Railway Line/Vikroli & Kanjurmarg Railway Stations. However, it is not disputed that the award of the Court has been marked in Evidence. It is further not disputed that the land which is subject matter of the award and the present land are in vicinity. They are comparable. In fact, the argument is that the present land is much superior and no deductions be made as in the award of this Court. Further, the instance before this Court is also comparable with the land under present reference.

23. The other deduction is related to the hutments surrounding the land and it being grassy and marshy. Therefore, the deductions of 10%, 30% and 20% respectively were thought necessary in the light of the admitted evidence before the learned Single Judge deciding LAR No.32 of 1981.

24. On the other hand, before me, the admitted position is to the contrary. There is no cross

examination as far as situation and location is concerned. The sale instance is the same which is the subject matter of the award and has been found to be bona fide.

25. In AIR-1993-SC-225 (Pal Singh and others Vs. Union Territory of Chandigarh) the Hon'ble Supreme Court had to observe following regarding admissibility of the award passed by a Court, in a reference, as a piece of evidence :-

> " No doubt, a judgement of a court in a land acquisition case determining the market value of land in the vicinity of the acquired lands, even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H.K.Mallick's case (supra) based on the authority of the Judicial Committee of the Privy Council in Secretary of State v. Indian General Steam Navigation and Railway Co. (1909)-ILR-36-Cal-967, where the Judicial committee did refuse to interfere with High Court judgement in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and

> circumstances, it could furnish the basis for determining the market value of the acquired land."

26. If the present reference is to be decided on the touchstone of these settled principles, then it is clear to me that the instance of sale which is common to both references, is found to be admittedly comparable. That very instance has been relied upon by this Court in LAR No.32 of 1981. Shri Dhopatkar is unable to point out to me anything by which it could be said that this Court should not take the rate of instance no.1 {i.e. land Survey Nos.115(part), 99(part) and 96.7(part)}. Therefore, it is not possible for me to accept the contention of Shri Dhopatkar that the said sale instance which is relied upon in the judgement of LAR No.32 of 1981 together with this judgement, be discarded as a piece of evidence. For the reasons set out by me hereinabove and applying the settled principles, it is not possible to hold that the said land and the land under present reference, are not identical.

27. For the self same reasons it is not possible to accede to the submissions of Shri Dhopatkar that the claimants have not led any evidence in

support of their claim for enhanced compensation. As noted by me above, it is true that the claimants have failed to adduce evidence in relation to rate of compensation @ Rs.120/- per sq.mtr. but they have proved their case partially and to the extent of Rs.70/- per sq.mtr. in comparison to the rate awarded in the sale instance which is the only instance relied upon by both, the SLAO as well as the claimants. The admitted rate is Rs.72.92 Ps. per sq.mtr.. That this land is not comparable, is not the case of the SLAO as well as Acquiring Body. Even otherwise, viewed from all angles and applying all relevant and necessary factors this instance is wholly comparable. Therefore, relying upon this piece of evidence and the deposition in furtherance thereof, the claimants have substantiated their case for enhanced compensation to the extent of Rs.70/- per sq.mtr..

28. It is not possible to accede to the other submissions of Shri Dhopatkar inasmuch as the deductions which are made by this Court in the judgement in LAR No.32 of 1981, are not necessary to be made in this case. Even the suggestion to the witness with regard to some structures and

sale of a portion of the land owned by the claimants, does not carry the case any further. The cross examination will have to be read in its entirety. The witness has clearly stated that the land was levelled, the construction work was going on but some temporary hutments of workers/labourers were located during the construction work and in any event they are not on the acquired land. Thus, there are no encroachments, land is levelled, open and vacant. It does not require any filling. It is not admittedly grassy and marshy but capable of being developed. Similarly it is situate on the Western side of Kanjurmarg and Vikroli Railway Stations and Central Railway Line. Hence, no case is made out of the deductions on this count.

29. In the result, the claim for enhanced compensation made by the claimants succeeds partially. They are entitled to the compensation of Rs.70/- per sq.mtr.. This rate is determined on the basis that the sale instance is of 1971. The rate of Rs.57.92 Ps. per sq.mtr. is of the year 1971. The relevant date in this case is 26th April 1975. Hence, applying the rate of 5% increase, the figure of Rs.70/- per sq.mtr. can safely be arrived at. That would be the market

value of the land under reference.

30. The claimants are entitled to the difference between the rate awarded (Rs.40/- per sq.mtr.) by the SLAO and Rs.70/- per sq.mtr. under this judgement with all statutory benefits including interest and solatium. The SLAO and Acquiring Body to pay the difference, as computed, along with statutory benefits, in the enclosed statement marked as Exhibit-1, within a period of 16 weeks (sixteen weeks) from today. No order as to costs.

(S.C.DHARMADHIKARI, J.)